State of California — Board of Equalization

Memorandum

To : Mr. Verne Walton, Chief
Assessment Standards Division

Date : March 20, 1992

From : Mr. Robert R. Keeling
Tax Counsel

Subject : Review of Your Proposed Response To Shasta County Inquiry

We have reviewed your proposed response to an inquiry from the Shasta County Assessor regarding a taxpayer's partition of an 80 acre parcel. The three owners of the property challenged the assessor's change in ownership reassessment saying that the owner's partition of the 80 acres into 11 parcels was not a change in ownership event even though the owners later distributed the 11 parcels to themselves so that two of the parties took ownership of 4 parcels each and the third party took ownership of the remaining 3 parcels. We agree with your analysis that such a partition of land does not constitute a change in ownership. Your advice is well supported by Assessors Letter 80/84, Example 1. That example sets forth the proposition that one appraisal unit of property can be partitioned to its multiple owners without causing the property to be reassessed. Apparently the assessor mistakenly used Example 2 which states that two separate properties, each being an appraisal unit, cannot escape a change in ownership reassessment under the "partition" exclusion when the two pieces of property go from joint ownership of both to separate ownership of each.

We understand this response was written by your staff person Mark Nisson. Please compliment Mark for a job well done. This response is particularly well written.

Robert R. Keeling

RRK:ta
0002D
cc: Mr. John W. Hagerty
Mr. Dick Johnson
Mr. Mark Nissan

(916) 445-4982

Honorable Virginia A. Loftus
Shasta County Assessor
1500 Court Street, Room 115
Redding, California 96001

Dear Virginia:

In your letter dated August 20, 1991 you asked us to clarify the application of the change in ownership exclusion for partitions of real property interests (Revenue and Taxation Code Section 62(a)(1)). You stated that the Shasta County Assessment Appeals Board recently concluded that the exclusion was applicable to the facts of a case under appeal; however, in reaching its conclusion the local board opined that our letter to assessors on the subject was ambiguous (letter to assessors 80/84). The appeals board asked your office to request clarification from the Board of Equalization.

The case before the appeals board involved a parcel of 80 acres that was subdivided into 11 parcels of roughly equal size. Before the subdivision and immediately after it, the property was owned by three parties as tenants in common. Eight days following the subdivision, the three parties effected transfers partitioning their joint ownership of the 11 parcels. The partition gave two of the parties severalty ownership in four parcels each, while the third party took ownership of the remaining three parcels. The assessor and the appellants stipulated that, in terms of value, the proportional

ownership interest of each co-owner remained the same after the transfers.

Your office concluded that the transfers after the subdivision constituted a 2/3 change in ownership of each of the 11 parcels. You reasoned that the subdivision into 11 parcels created 11 separate "appraisal units" to be considered separately for purposes of determining whether proportional ownership interest were maintained (as required by Section 62(a)(1)) after the transfers. You concluded that for the exclusion to apply in this case, the original 80 acres would have to have been subdivided into three parcels rather than 11.

You stated that consultations with our Technical Services Unit prior to the appeals hearing confirmed that your position was consistent with Board staff's interpretation of Section 62(a)(1). And, although you testified that you had received concurrence from Board staff, apparently the appeals board was not persuaded.

Notwithstanding any previous advice from Board staff that a 2/3 change in ownership occurred in each of the 11 subdivided parcels, our position is that a subdivision creating more parcels than owners does not necessarily destroy the change in ownership exclusion for a subsequent partition of the parcels. We will explain below.

Section 62(a)(1) provides that a change in ownership shall not include:

"Any transfer between coowners which results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common."

Property Tax Rule 462(b)(2)(A)(i) provides that property is excluded from change in ownership when:

"The transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

"(i) a partition, . . ."

California courts have described partition as follows:

"In a partition, there is no change of title between the tenants in common—it is simply a dividing up of what the parties already own. After the partition, each tenant in common has exactly the same proportional interest in the property that he had prior thereto. The only difference is that now his interest is in severalty, while prior to the partition, it was in common." (Rancho Santa Margueŕita v. Vail (1938) 11 Cal.2d 501, 539).

The courts have restricted partition to a single parcel; the primary reason

for this is that a partition simply divides the "unity of possession" which is incorporated in any co-ownership method of holding title:

> "It is well settled that a decree of judgment in partition has no other affect than to sever the unity of possession and does not vest in either of the co-tenants any new or additional title. After the partition, each had precisely the same title which he had before; but that which before was a joint possession was converted into a several one." (Rancho Santa Marguerita v. Vail, supra, page 539, citing Bennet v. Potter (1919) 180 Cal. 736, 742.)

For change in ownership purposes, Board staff has expressed this single parcel concept in terms of the "appraisal unit." Thus, we noted in letter to assessors 80/84 that assessors value property on the basis of the appraisal unit. We stated further that the unit is defined in Assessors' Handbook Section 501 as the "unit most likely to be sold as indicated by the analysis of market data."

To elaborate on letter to assessors 80/84, staff's view is that, for purposes of applying the exclusion from change in ownership under Section 62(a)(1), a subdivision of a single parcel, or a single appraisal unit, prior to the partition should not destroy the exclusion if the subdivision was necessary before the owners could partition. Further, there appears to be no legal authority under which the exclusion would be lost solely because the number of parcels created by the subdivision is greater than the number

of owners. Thus, so long as the property under co-ownership consists of one appraisal unit prior to the subdivision, and a subdivision is necessary prior to a partition, it appears that the co-owners will have met the requirements of Section 62(a)(1). Of course, this conclusion also assumes that proportional ownership interests were maintained after the partition.

I hope this clarifies our position on this subject. If you have any further questions, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:sk